UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Plaintiff,

v. Criminal No. 16-232 (DWF)

Morgan James Baumann,

Defendant.

DEFENDANT'S POSITION ON SENTENCING

Morgan Baumann should be sentenced close to the mandatory minimum sentence of 10 years. Mr. Baumann's advisory guidelines sentence of 262 to 327 months is much higher than necessary to fulfill the purposes of sentencing.

The advisory guidelines for drugs are not emperically based. They were generated to conform to mandatory minimum sentences. In a thoroughly researched opinion, submitted for its reasoning value, in *U.S. v. Hayes,* 948 F. Supp. 2d 1009, 1015, 1031 (D.C. Iowa), the court discussed its policy disagreement with the guideline ranges for methamphetamine offenses. The court noted that "For policy reasons, and to conform to statutory mandatory minimum sentences, the Commission did not employ its characteristic empirical approach when setting the Guidelines for drug offenses." [Citation omitted]. Because of this, the court afforded them less deference. The court further stated:

> A variance based on a policy disagreement is particularly appropriate for methamphetamine offenses because the Guidelines range results in sentences greater than necessary to achieve sentencing objectives and the Guidelines are not based on empirical data and national experience. *See Kimbrough*, 552 U.S. at 96, 128 S.Ct. 558 ("The Commission did not use this empirical approach in developing the Guidelines sentences for drug-trafficking offenses."); *Gall*, 552 U.S. at 46 n. 2, 128 S.Ct. 586 ("[T]he Sentencing Commission departed from the empirical approach when setting the Guidelines range for drug offenses, and chose instead to key the Guidelines to the statutory mandatory minimum sentences that Congress established for such crimes.").

Mr. Baumann's counsel should not have agreed to a waiver of appeal from a sentence at the low end of the advisory guidelines, because that falsely implies that the defense believes that the advisory guidelines for drug cases are reasonable. They aren't. The guidelines are excessive in the extreme, and even if they weren't in general they would be as applied to Mr. Baumann.

While at entry of plea the Court noted at sentencing it does not consider any appeal waiver in determining a sentence, and the government stated frankly to the effect, if stated correctly, that it wouldn't likely appeal a sentence below the guidelines, nonetheless it was a mistake for the defense to agree to a guideline sentence that it considers extremely unfair and unnecessary.

A sentence at or close to the 10-year mandatory minimum sentence would punish Mr. Baumann severely. He hasn't previously been sentenced to more than 16 months in confinement. 10 years would be much of 10 times that.

A sentence in the range of 10 years would deter the commission of these crimes. Most people who have not faced extensive sentencing in federal court have no idea of the extremely high penalties involved and face sticker shock and a grieving process in coming to terms with potential outcomes. While those in the system might become inured to the guidelines, that doesn't apply to defendants and potential defendants. Knowing that Mr. Baumann got at or near 10 years for his crimes would provide as much deterrence as could be done.

A sentence near 10 years would fulfill the other purposes of the sentencing statute and would provide Mr. Baumann with the best chance for rehabilitation and a life after prison. During that sentence he would be able to go through intensive drug treatment and vocational training, both of which would reduce the chance of recidivism.

Mr. Baumann has done everything he could to show post-offense rehabilitation since he was first contacted by law enforcement, such as by assisting law enforcement in the retrieval of firearms, and during the time this case has been proceeding, and these efforts justify consideration similar to cooperation.

Mr. Baumann has been on pretrial release since his first appearance. He could have absconded from the halfway house he was placed at if he had chosen to but has remained and followed the rules of the facility. Mr. Baumann will not get credit on his sentence for this time, but because it amounts to confinement it should be considered in the sentence imposed.

Mr. Baumann does not have special talents or skills that make him stand out as a defendant, but that doesn't mean he should be subjected to a generic sentence. It's all the more reason that his prison sentence should not be longer than necessary because he will have even greater challenges than many on release in making a success of his life.

Dated: March 22, 2017

Respectfully submitted,

NORTHLAND LAW

s/ Craig S. Hunter

Craig S. Hunter (#48264)
Attorney for Defendant
101 West 2nd Street, #211B
Duluth, MN 55802
(218) 625-2215